

NATHAN FINNEGAN.

MAY 16, 1910.—Ordered to be printed.

Mr. ADAIR, from the Committee on Claims, submitted the following

ADVERSE REPORT.

[To accompany H. R. 6117.]

The Committee on Claims, to whom was referred the bill (H. R. 6117) for the relief of Nathan Finnegan, having considered the same, report thereon with a recommendation that it do not pass.

Appended hereto are letters from the Secretary of War, which are made part of this report.

WAR DEPARTMENT,
OFFICE OF THE JUDGE-ADVOCATE-GENERAL,
Washington, D. C., April 19, 1910.

Respectfully returned to the Secretary of War.

I concur in the views expressed by The Adjutant-General in the accompanying memorandum as to the want of merit of the claimant who is the beneficiary of House bill No. 6117, which is among the papers in reference.

The regulations in force during the period of the war of the rebellion authorized extra-duty pay to enlisted men, at the rate of 25 cents per day east of the Rocky Mountains, and 40 cents per day west of those mountains, but contained the following proviso:

"But no man shall be rated and paid as a clerk or mechanic, who is not skilled in his particular employment; nor any man as a storekeeper, etc., whose trust is not of sufficient importance. Mere strikers, inferior workmen, etc., shall be rated as laborers. Commanding officers will particularly see to this; nor shall any soldier be rated at the higher pay, except by their order." (Par. 902, Army Regulations of 1863.)

It will be seen that the rates of pay for services rendered by enlisted men on extra duty at the time of the claimant's employment was but 40 cents per day. There is no showing that the services rendered were worth \$5 per day, as indicated in the inclosed bill.

The adoption of this legislation would be to establish a precedent in favor of claims from former enlisted men who served during the war of the rebellion as extra or daily duty men and were fully compensated for their services at the rates of pay which were then established by law. To now readjust these claims at a rate twenty times greater than that paid when the services were rendered would, in the opinion of this office, constitute a dangerous precedent, as it would authorize a readjustment of the extra-duty account of the enlisted men of the Regular and Volunteer Armies, thousands in number, who rendered extra-duty services during the war of the rebellion, for which they were paid the rates stipulated by law.

GEO. B. DAVIS,
Judge-Advocate-General.

WAR DEPARTMENT, April 20, 1910.

Respectfully returned to Hon. George W. Prince, chairman of the Committee on Claims, House of Representatives, inviting attention to the accompanying report of The Adjutant-General, and concurring in the opinion expressed therein and in the preceding indorsement of the Judge-Advocate-General of the Army.

J. M. DICKINSON,
Secretary of War.

Case of Nathan Finnegan, late of Company D, First Regiment Ohio Volunteer Cavalry.

In May, 1894, the chairman of the committee on War Claims, House of Representatives, requested to be furnished with information from the records of the War Department concerning a similar bill for the relief of this man (H. R. 4508, 52d Cong., 2d sess.). On May 19, 1894, the request of the chairman of the committee was returned to the Secretary of War by this office, through the office of the Chief of Engineers of the Army, by indorsement as follows:

"It is shown by the records of this office that Nathan Finnegan, Company D, First Ohio Cavalry, was enrolled August 5, 1861, to serve three years, and was mustered into service as a private August 31, 1861, to date August 30, 1861; was appointed corporal October 28, 1862, and was promoted to the grade of sergeant October 28, 1862.

"By Special Field Orders, No. 67, paragraph 3, dated March 11, 1863, from headquarters, Department of the Cumberland, he was detailed for duty in the topographical engineer department, and was ordered to report as soon as his regiment was paid to Captain Michler, chief of topographical engineers. He was relieved from duty in the topographical engineer's office, Department of the Cumberland, and was ordered to rejoin his regiment, by Special Field Orders, No. 258, paragraph 8, dated September 18, 1864, from headquarters, Department of the Cumberland. He was mustered out of service, as a sergeant, at Columbia, Tenn., October 6, 1864.

"He is also reported on the rolls as Nathan Finnigan."

Again, on February 23, 1898, the chairman of the Committee on War Claims, House of Representatives, requested to be furnished with the military record of this soldier for use in connection with a bill then pending before the committee, providing for the payment for services as a draftsman rendered by Finnegan at the headquarters, Army of the Cumberland. On February 24, 1898, another report, similar to that quoted above, was returned to the Secretary of War, at which time attention was invited to the report in the case previously furnished on May 19, 1894, as stated above.

Nothing has been found of record in this office to show the nature of the duties performed by the soldier while on detached service from his command during the period from on or about March 11, 1863, until on or about September 18, 1864, except that in a letter dated April 27, 1864, it appears that he was then on duty as a draftsman. This duty was performed by him while he was an enlisted man of Company D, First Ohio Cavalry Volunteers, and while so engaged he undoubtedly received the pay and allowances of a sergeant, which rank he then held, and, in addition thereto, he probably received some extra pay for services so rendered. No information concerning the amount of pay received by him while on detached service is afforded by the records of this office, and it is therefore impossible for the office to make any statement as to the amount of money that would become due by the enactment of the pending measure. Definite information concerning such amount can, however, probably be obtained, if desired, from the accounting officers of the Treasury.

With respect to the merits of the claim, it should be stated that many soldiers who served in the civil war were detached from their companies for various periods and while on such detached duty rendered valuable service to the Government. While there is no reason to doubt that Finnegan performed efficient service during the period he was employed at the headquarters of the Army of the Cumberland, yet it does not appear that the services so rendered by him were of any higher order or of any greater value than the services of a similar character rendered by hundreds of other enlisted men who were on detached service from their commands at various periods during the civil war.

As the enactment of the pending bill would, therefore, be a discrimination in favor of the proposed beneficiary as against hundreds of other enlisted men who rendered as efficient and valuable service as the man in question, and who have quite as strong, if not stronger, claims for the consideration of the Government, and as the enactment of the pending measure would also likely be an incentive for numer-

ous appeals for legislation in behalf of other men who rendered service of the character of that in question while in the civil war, the war with Spain, the Philippine insurrection, and in the Regular Army, it is recommended that the pending measure be not favorably considered.

Respectfully submitted.

F. C. AINSWORTH,
The Adjutant-General.

WAR DEPARTMENT,
THE ADJUTANT-GENERAL'S OFFICE,
April 14, 1910.
The SECRETARY OF WAR.



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